

109TH CONGRESS  
1ST SESSION

# H. R. 3192

To provide for a paid family and medical leave insurance program, and  
for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 30, 2005

Mr. STARK (for himself, Mr. GEORGE MILLER of California, Mr. OWENS, Ms. WOOLSEY, and Mr. LANTOS) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide for a paid family and medical leave insurance  
program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Paid Family and Med-  
5 ical Leave Act of 2005”.

6 **SEC. 2. CONGRESSIONAL FINDINGS.**

7 Congress finds the following:

1           (1) Although family and medical leave laws  
2           have assisted employees to balance the demands of  
3           the workplace with their family responsibilities, more  
4           needs to be done to achieve the goals of workforce  
5           stability and economic security.

6           (2) All working Americans need to be able to  
7           take leave from work, at times, to recover from their  
8           own serious illness, to take care of a seriously ill  
9           family member, or to care for a newborn or newly  
10          adopted child.

11          (3) Americans who provide direct care for their  
12          family members prevent the worsening of illnesses  
13          and promote strong recovery. For example, when  
14          parents are able to attend to their child in a hos-  
15          pital, the child's stay decreases by 31 percent, ena-  
16          bling parents to make an expedited return to work.

17          (4) For many workers, the promise of family or  
18          medical leave is meaningless because they cannot af-  
19          ford to take leave without pay.

20          (5) Seventy-eight percent of eligible employees  
21          who need but do not take family or medical leave do  
22          not take it because they cannot afford to.

23          (6) One in ten employees who receive less than  
24          full pay while on leave are forced onto public assist-  
25          ance.

1           (7) Forty-seven percent of women and men  
2 working in the private sector lack any access to paid  
3 sick leave to help compensate them if they become  
4 seriously ill. For those workers who do have access  
5 to paid sick leave, few can use it to receive a pay-  
6 check while caring for family members.

7           (8) Family and medical leave benefits strength-  
8 en and support the business sector through health  
9 care savings and increased employee retention and  
10 productivity.

11           (9) Organizations struggling to weather the  
12 current economic downturn will have a bottom-line  
13 interest in maintaining a stable workforce and re-  
14 taining experienced employees in whom they have al-  
15 ready invested.

16           (10) Demographic changes over the past few  
17 decades have altered the face and needs of the work  
18 force. It is now common for both parents to be in  
19 the workforce and many men and women also find  
20 themselves as the primary caregiver for an elderly  
21 spouse or parent.

22           (11) Fifty-five percent of women with babies  
23 younger than one are in the workforce, while 73 per-  
24 cent of women with children one year or older are  
25 in the workforce.

1           (12) Nearly two-thirds of Americans under the  
2           age of 60 expect to be responsible for the care of an  
3           elder relative in the next ten years.

4 **SEC. 3. DEFINITIONS.**

5           (a) IN GENERAL.—Except as provided in subsection  
6 (b) of this Act, the definitions provided by section 101 of  
7 the Family and Medical Leave Act of 1993 (29 U.S.C.  
8 2611) shall apply for purposes of this Act.

9           (b) ADDITIONAL DEFINITIONS.—For purposes of this  
10 Act, the following additional definitions shall apply:

11           (1) BOARD OF TRUSTEES.—The term “Board  
12           of Trustees” means the Board of Trustees of the  
13           Family and Medical Leave Trust Fund.

14           (2) CALENDAR QUARTER AND QUARTER.—The  
15           terms “calendar quarter” and “quarter” mean a pe-  
16           riod of three calendar months ending on March 31,  
17           June 30, September 30, or December 31.

18           (3) COVERED AGENCY.—The term “covered  
19           agency”, when used with respect to a State, means  
20           the State agency referred to in paragraph (1) of sec-  
21           tion 101(b), or the Commissioner of the Social Secu-  
22           rity Administration if the Commissioner is carrying  
23           out the State Family and Medical Insurance Pro-  
24           gram in the State under paragraph (2) of such sec-  
25           tion.

1           (4) COMMISSIONER.—The term “Commis-  
2           sioner” means the Commissioner of the Social Secu-  
3           rity Administration.

4           (5) ELIGIBLE EMPLOYEES.—Section 101(2) of  
5           the Family and Medical Leave Act of 1993 (29  
6           U.S.C. 2611(2)) shall not apply for purposes of this  
7           Act, and the term “eligible employee” means any of  
8           the following:

9                   (A) An employee who has earned at least  
10                   \$250 in each of the four calendar quarters prior  
11                   to filing an application for benefits under this  
12                   title.

13                   (B) A self-employed individual who has—

14                           (i) elected to participate in the pro-  
15                           gram under this title in accordance with  
16                           such regulations as the Secretary of Labor  
17                           shall prescribe;

18                           (ii) earned at least \$250 of self-em-  
19                           ployment income in each of the four cal-  
20                           endar quarters prior to filing an applica-  
21                           tion for benefits under this title; and

22                           (iii) paid tax under section 1401(c) of  
23                           the Internal Revenue Code of 1986 with  
24                           respect to such self-employment income.

1           (C) An employee who was covered by a vol-  
2           untary employer plan under section 101(d)(3)  
3           that has been terminated or whose employer  
4           has eliminated such a plan.

5           (D) A Federal officer or employee covered  
6           under subchapter V of chapter 63 of title 5,  
7           United States Code.

8           (6) EMPLOYER.—For purposes of this title,  
9           subparagraph (A) of section 101(4) of the Family  
10          and Medical Leave Act of 1993 (29 U.S.C. 2611(4))  
11          shall be applied by substituting “one” for “50”.

12          (7) PROGRAM.—The term “Program” means a  
13          State Family and Medical Insurance Program estab-  
14          lished under section 101.

15          (8) MANAGING TRUSTEE.—The term “Man-  
16          aging Trustee” means the Managing Trustee of the  
17          the Board of Trustees of the Family and Medical  
18          Leave Trust Fund.

19          (9) TRUST FUND.—The term “Trust Fund”  
20          means the Family and Medical Leave Trust Fund  
21          established under section 201.

22          (10) QUARTER OF COVERAGE.—The term  
23          “quarter of coverage” means a period in which an  
24          individual earned wages or self-employment income  
25          of at least \$250 in a quarter and paid taxes on that

1 income into the Family and Medical Leave Trust  
2 Fund.

3 **TITLE I—FAMILY AND MEDICAL**  
4 **INSURANCE PROGRAM**

5 **SEC. 101. ESTABLISHMENT.**

6 (a) FEDERAL PROGRAM.—The Secretary of Labor  
7 shall establish a Family and Medical Insurance Program.

8 (b) STATE PROGRAMS.—In carrying out the Federal  
9 Program, the Secretary may—

10 (1) enter into a contract with a State under  
11 which—

12 (A) the State agrees to establish, and pro-  
13 vide the benefits described under this title in  
14 that State through a Family and Medical Insur-  
15 ance Program; and

16 (B) the Secretary agrees to instruct the  
17 Managing Trustee of the Family and Medical  
18 Leave Trust Fund, established under section  
19 201, to provide funds for such benefits from the  
20 Fund; or

21 (2) at the request of the Governor of a State,  
22 enter into an interagency agreement with the Com-  
23 missioner of the Social Security Administration to  
24 establish, and provide the benefits described under  
25 this title, through a State Family and Medical In-

1 insurance Program directly in a State from funds pro-  
2 vided to the Commissioner by the managing trustee  
3 of the Fund.

4 (c) STATE APPLICATION.—To be eligible to receive  
5 a contract under subsection (b)(1), a State shall submit  
6 an application to the Secretary at such time, in such man-  
7 ner, and containing such information as the Secretary may  
8 require. At a minimum, the application shall include infor-  
9 mation identifying the State agency to carry out the State  
10 Family and Medical Insurance Program.

11 **SEC. 102. BENEFITS.**

12 (a) ENTITLEMENT.—Under a State Family and Med-  
13 ical Insurance Program, an eligible employee shall be enti-  
14 tled to a family and medical insurance benefit for a total  
15 of 12 workweeks of leave during any 12 month period for  
16 one or more of the following reasons, subject to a waiting  
17 period of 7 consecutive days during each family and med-  
18 ical insurance period where no benefits are payable within  
19 that period:

20 (1) Because of the birth of a son or daughter  
21 of the employee and in order to care for such a son  
22 or daughter.

23 (2) Because of the placement of a son or  
24 daughter with the employee for adoption or foster  
25 care.

1           (3) In order to care for a child, parent, spouse,  
2           or other persons who are members of the employee's  
3           household who have a serious medical condition.

4           (4) Because of a serious health condition that  
5           makes the employee unable to perform the functions  
6           of the position of such employee.

7           (b) BENEFIT AMOUNT.—

8           (1) IN GENERAL.—An eligible employee's paid  
9           family and medical insurance benefit for any work-  
10          day on which the employee takes leave as described  
11          in subsection (a) shall be equal to 55 percent of the  
12          daily equivalent of the weekly basic earnings of the  
13          eligible employee when the leave commenced, re-  
14          duced by any amount received by the eligible em-  
15          ployee for the same period from any other source for  
16          the reasons referred to in such subparagraph.

17          (2) WEEKLY BASIC EARNINGS.—The weekly  
18          basic earnings of an eligible employee for purposes  
19          of this title shall be equal to the weekly basic earn-  
20          ings of the eligible employee up to the maximum  
21          amount specified in this subsection for the calendar  
22          year in which the leave commenced. Not later than  
23          November 1 preceding each calendar year, the Sec-  
24          retary shall publish in the Federal Register the max-

1       imum weekly amount for leave for such calendar  
2       year.

3           (3) CALENDAR YEAR 2008.—With respect to  
4       leave provided in calendar year 2008, the maximum  
5       weekly amount under this subparagraph shall be  
6       \$1,350.

7           (4) SUBSEQUENT CALENDAR YEARS.—With re-  
8       spect to leave provided in any calendar year after  
9       2008, the maximum weekly basic earnings referred  
10      to in clause (ii) shall equal the product of \$1,350  
11      and the quotient obtained by dividing—

12           (A) the national average wage index (as  
13      defined in section 209(k)(1) of the Social Secu-  
14      rity Act (42 U.S.C. 409(k)(1))) for the second  
15      calendar year preceding the calendar year for  
16      which the determination is made; by

17           (B) the national average wage index (as so  
18      defined) for calendar year 2008.

19           (5) ROUNDING.—Each amount established  
20      under this subsection for any calendar year shall be  
21      rounded to the nearest \$1, except that any amount  
22      so established that is a multiple of \$0.50 but not of  
23      \$1 shall be rounded to the next higher multiple of  
24      \$1.

25           (c) APPLICATION.—

1           (1) IN GENERAL.—To be eligible to receive a  
2 family and medical insurance benefit under this title  
3 in a State, an eligible employee shall submit an ap-  
4 plication to the covered agency for the State at such  
5 time, in such manner, and containing the informa-  
6 tion specified in paragraph (3) and such additional  
7 information as the agency may require.

8           (2) IRREVOCABILITY FOR SELF-EMPLOYED IN-  
9 DIVIDUALS.—An election by a self-employed indi-  
10 vidual to participate in the Program shall be irrev-  
11 ocable.

12           (3) CERTIFICATION REQUIREMENTS.—The cov-  
13 ered agency shall require each of the following, as  
14 part of the application for benefits under this section  
15 in connection with any leave:

16           (A) A certification, submitted in a timely  
17 manner, issued by the health care provider of  
18 the eligible employee or of the child, spouse,  
19 parent, or member of the employee’s household,  
20 as appropriate, and meeting the requirements  
21 of section 103(b) of the Family and Medical  
22 Leave Act of 1993 (29 U.S.C. 2613(b)) in con-  
23 nection with such leave.

24           (B) In any case in which the covered agen-  
25 cy has reason to doubt the validity of the cer-

1           tification provided under subparagraph (A), the  
2           Secretary may require, at the expense of the  
3           covered agency, that the eligible employee ob-  
4           tain the opinion of a second health care pro-  
5           vider designated or approved by the agency con-  
6           cerning any information certified under sub-  
7           paragraph (A).

8           (C) In any case in which the second opin-  
9           ion described in subparagraph (B) differs from  
10          the opinion in the original certification provided  
11          under subparagraph (A), the covered agency  
12          may require, at the expense of the agency, that  
13          the employee obtain the opinion of a third  
14          health care provider designated or approved  
15          jointly by the agency and the employee con-  
16          cerning the information certified under sub-  
17          paragraph (A). The opinion of the third health  
18          care provider concerning such information shall  
19          be considered to be final and shall be binding  
20          on the agency and the employee.

21          (d) PAYMENT OF BENEFITS.—

22                (1) PAYMENT FROM TRUST FUND.—Benefit  
23                payments required to be made under this section  
24                shall be made only from the Trust Fund.

1           (2) CERTIFICATION AND PAYMENT.—On the  
2 final decision of a covered agency or on the final  
3 judgment of any court of competent jurisdiction pur-  
4 suant to paragraph (3) that any person is entitled  
5 to any payment under this section—

6           (A) the covered agency shall certify to the  
7 Managing Trustee of the Board of Trustees of  
8 the Trust Fund the name and address of the  
9 person entitled to receive such payment, the  
10 amount of such payment, and the time at which  
11 such payment shall be made;

12           (B) the Managing Trustee shall pay the  
13 certified amount from the Trust Fund to the  
14 covered agency; and

15           (C) the covered agency shall make the pay-  
16 ment to the person.

17           (3) REVIEW.—Any eligible employee dissatisfied  
18 with any initial determination under this section  
19 shall be entitled to reconsideration of the determina-  
20 tion, and a hearing on the determination, by the  
21 Secretary to the same extent as is provided in sec-  
22 tion 205(b) of the Social Security Act (42 U.S.C.  
23 405(b)) and to judicial review of the final decision  
24 after such hearing as is provided in section 205(g)  
25 of the Social Security Act (42 U.S.C. 405(g)).

1           (4) WITHHOLDING OF CERTIFICATION.—In any  
2 case in which a review of the covered agency’s deci-  
3 sion is or may be sought under paragraph (3), the  
4 covered agency may withhold certification of pay-  
5 ment pending such review.

6           (5) OTHER COMPENSATION.—Except as pro-  
7 vided in section 105, no employee shall be eligible to  
8 receive paid leave benefits under this title for any  
9 period during which—

10                   (A) the employee is receiving worker’s  
11 compensation or compensation through unem-  
12 ployment insurance in connection with the event  
13 for which the employee is taking the leave; or

14                   (B) the employee is receiving paid leave  
15 benefits from an employer under a voluntary  
16 employer plan approved under paragraph (3).

17           (e) REGULATIONS.—The Secretary shall regula-  
18 tions to carry out this subsection, including the determina-  
19 tion of benefits for leave taken intermittently or on a re-  
20 duced leave schedule, or for leave taken by a part-time,  
21 seasonal, or intermittent employee.

22 **SEC. 103. VOLUNTARY EMPLOYER PLAN.**

23           The Secretary shall approve any voluntary plan of an  
24 employer as to which the Secretary finds that there is at

1 least one employee in employment and all of the following  
2 exist:

3           (1) The rights afforded to the covered employ-  
4 ees are equal or greater than those provided in the  
5 relevant Program.

6           (2) The plan has been made available to all of  
7 the employees of the employer employed in the  
8 United States or to all employees at any one dis-  
9 tinct, separate establishment maintained by the em-  
10 ployer in the United States. As used in this para-  
11 graph, the term “employees” includes those individ-  
12 uals in partial or other forms of short-time employ-  
13 ment and employees not in employment as the Sec-  
14 retary shall prescribe by regulation.

15           (3) A majority of the employees of the employer  
16 employed in the United States or a majority of the  
17 employees employed at any one distinct, separate es-  
18 tablishment maintained by the employer in the  
19 United States have consented to the plan.

20           (4) The plan provides for insurance to be issued  
21 by an admitted disability insurer approved by the  
22 Secretary or equivalent.

23           (5) The employer has consented to the plan and  
24 has agreed to make the payroll deductions required,

1 if any, and transmit the proceeds to the disability in-  
2 surer, if any.

3 (6) The plan provides for the inclusion of future  
4 employees.

5 (7) The plan will be in effect for a period of not  
6 less than one year and, thereafter, continuously un-  
7 less the Secretary finds that the employer or a ma-  
8 jority of its employees employed in the United States  
9 or a majority of the employees employed at any one  
10 distinct, separate establishment maintained by the  
11 employer in the United States covered by the plan  
12 have given notice of the termination of the plan and  
13 paid a fee to the Secretary in such amount as the  
14 Secretary deems adequate to cover family and med-  
15 ical insurance benefits under this title to all employ-  
16 ees of the employer for a period of at least four cal-  
17 endar months, plus an amount to pay administrative  
18 costs related to processing and paying such benefits.  
19 The notice shall be filed in writing with the Sec-  
20 retary and shall be effective only on the anniversary  
21 of the effective date of the plan next following the  
22 filing of the notice, but in any event not less than  
23 30 days from the time of the filing of the notice.  
24 Amounts received by the Secretary under this sub-  
25 paragraph shall be deposited in the Trust Fund.

1           (8) The amount of deductions from the wages  
2           of an employee in effect for any plan shall not be in-  
3           creased on any date other than on the date of an an-  
4           niversary of the effective date of the plan.

5 **SEC. 104. ADDITIONAL BENEFITS.**

6           (a) **ADDITIONAL STATE PROGRAMS.**—Any State that  
7 has a separate State family and medical insurance pro-  
8 gram or temporary disability program may pay an eligible  
9 employee benefits under such separate program in addi-  
10 tion to the benefits under this title or use the separate  
11 State program to pay for additional weeks of benefits after  
12 the benefits available under this title are exhausted.

13           (b) **ADDITIONAL EMPLOYER BENEFITS.**—Nothing in  
14 this title disallows an employer who participates in a State  
15 Program from providing an employee additional benefits  
16 in addition to the family and medical insurance benefit  
17 provided under this title. These additional employer bene-  
18 fits shall not reduce the amount of the benefit that an  
19 employee collects from the family and medical insurance  
20 benefit under the State Program.

21           (c) **COLLECTIVE BARGAINING.**—Nothing in this title  
22 shall interfere with the right of unions to bargain collec-  
23 tively with employers to provide benefits that are better  
24 than the family and medical insurance benefit provided  
25 under this title.

1 **SEC. 105. PROHIBITED ACTS BY EMPLOYER.**

2 (a) INTERFERENCE WITH RIGHTS.—It shall be un-  
3 lawful for any employer to interfere with, restrain, or deny  
4 the exercise of or the attempt to exercise, any right pro-  
5 vided under this title.

6 (b) DISCRIMINATION.—It shall be unlawful for any  
7 employer to discharge or in any other manner discriminate  
8 against any individual for opposing any practice made un-  
9 lawful by this title.

10 (c) INTERFERENCE WITH PROCEEDINGS OR INQUIR-  
11 IES.—It shall be unlawful for any person to discharge or  
12 in any other manner discriminate against any individual  
13 because such individual—

14 (1) has filed any charge, or has instituted or  
15 caused to be instituted any proceeding, under or re-  
16 lated to this title;

17 (2) has given, or is about to give, any informa-  
18 tion in connection with any inquiry or proceeding re-  
19 lating to any right provided under this title; or

20 (3) has testified, or is about to testify, in any  
21 inquiry or proceeding relating to any right provided  
22 under this title.

23 **SEC. 106. ENFORCEMENT.**

24 (a) CIVIL ACTION BY EMPLOYEES.—

1           (1) LIABILITY.—Any employer who violates sec-  
2           tion 106 shall be liable to any eligible employee af-  
3           fected—

4                   (A) for damages equal to—

5                           (i) the amount of—

6                                   (I) any wages, salary, employ-  
7                                   ment benefits, or other compensation  
8                                   denied or lost to such employee by  
9                                   reason of the violation; or

10                                  (II) in a case in which wages,  
11                                  salary, employment benefits, or other  
12                                  compensation have not been denied or  
13                                  lost to the employee, any actual mone-  
14                                  tary losses sustained by the employee  
15                                  as a direct result of the violation, such  
16                                  as the cost of providing care, up to a  
17                                  sum equal to 12 weeks of wages or  
18                                  salary for the employee;

19                                  (ii) the interest on the amount de-  
20                                  scribed in clause (i) calculated at the pre-  
21                                  vailing rate; and

22                                  (iii) an additional amount as liq-  
23                                  uidated damages equal to the sum of the  
24                                  amount described in clause (i) and the in-  
25                                  terest described in clause (ii), except that

1 if an employer who has violated section  
2 106 proves to the satisfaction of the court  
3 that the act or omission which violated the  
4 such subsection was in good faith and that  
5 the employer had reasonable grounds for  
6 believing that the act or omission was not  
7 a violation of such subsection, such court  
8 may, in the discretion of the court, reduce  
9 the amount of the liability to the amount  
10 and interest determined under clauses (i)  
11 and (ii), respectively; and

12 (B) for such equitable relief as may be ap-  
13 propriate, including employment, reinstatement,  
14 and promotion.

15 (2) RIGHT OF ACTION.—

16 (A) IN GENERAL.—Except as provided in  
17 subparagraph (B), an action to recover the  
18 damages or equitable relief prescribed in para-  
19 graph (1) may be maintained against any em-  
20 ployer (including a public agency) in any Fed-  
21 eral or State court of competent jurisdiction by  
22 any one or more employees for and on behalf  
23 of—

24 (i) the employees; or

1 (ii) the employees and other employ-  
2 ees similarly situated.

3 (B) LIMITATION.—The right provided by  
4 subparagraph (A) to bring an action by or on  
5 behalf of any employee shall terminate—

6 (i) on the filing of a complaint by the  
7 Secretary in an action under subsection  
8 (b)(3) in which restraint is sought of any  
9 further delay in the payment of the  
10 amount described in paragraph (1)(A) to  
11 such employee by an employer responsible  
12 under paragraph (1) for the payment; or

13 (ii) on the filing of a complaint by the  
14 Secretary in an action under paragraphs  
15 (1) or (2) of subsection (b) in which a re-  
16 covery is sought of the damages described  
17 in paragraph (1)(A) owing to an eligible  
18 employee by an employer liable under para-  
19 graph (1),

20 unless the action described in clauses (i) or (ii)  
21 is dismissed without prejudice on motion of the  
22 Secretary.

23 (3) FEES AND COSTS.—The court in an action  
24 brought under this subsection shall, in addition to  
25 any judgment awarded to the plaintiff, allow a rea-

1       sonable attorney's fee, reasonable expert witness  
2       fees, and other costs of the action to be paid by the  
3       defendant.

4       (b) ACTIONS BY THE SECRETARY.—

5           (1) ADMINISTRATIVE ACTION.—The Secretary  
6       shall receive, investigate, and attempt to resolve  
7       complaints of violations of section 106 in the same  
8       manner that the Secretary receives, investigates, and  
9       attempts to resolve complaints of violations of sec-  
10      tions 6 and 7 of the Fair Labor Standards Act of  
11      1938 (29 U.S.C. 206 and 207).

12          (2) CIVIL ACTION.—

13           (A) RIGHT OF ACTION.—The Secretary  
14       may bring an action in any court of competent  
15       jurisdiction to recover the damages described in  
16       paragraph (1)(A).

17           (B) SUMS RECOVERED.—Any sums recov-  
18       ered by the Secretary pursuant to this para-  
19       graph shall be held in a special deposit account  
20       and shall be paid, on order of the Secretary, di-  
21       rectly to each employee affected. Any such sums  
22       not paid to an employee because of inability to  
23       do so within a period of 3 years shall be depos-  
24       ited into the Treasury of the United States as  
25       miscellaneous receipts.

1           (3) ACTION FOR INJUNCTION BY THE SEC-  
2           RETARY.—The district courts of the United States  
3           shall have jurisdiction, for cause shown, in an action  
4           brought by the Secretary—

5                   (A) to restrain violations of prohibited acts  
6                   section, including the restraint of any with-  
7                   holding of payment of wages, salary, employ-  
8                   ment benefits, or other compensation, plus in-  
9                   terest, found by the court to be due to eligible  
10                  employees; or

11                  (B) to award such other equitable relief as  
12                  may be appropriate, including employment, re-  
13                  instatement, and promotion.

14           (4) SOLICITOR OF LABOR.—The Solicitor of  
15           Labor may appear for and represent the Secretary  
16           on any litigation brought under this subsection.

17           (c) LIMITATION.—

18                   (1) Except as provided in paragraph (2), an ac-  
19                   tion may be brought under subsections (a) or (b) not  
20                   later than 2 years after the date of the last event  
21                   constituting the alleged violation for which the ac-  
22                   tion is brought.

23                   (2) WILLFUL VIOLATION.—In the case of such  
24                   action brought for a willful violation of section 106,  
25                   such action may be brought within 3 years of the

1 date of the last event constituting the alleged viola-  
2 tion for which such action is brought.

3 (3) COMMENCEMENT.—In determining when an  
4 action is commenced for the purposes of this sub-  
5 section, it shall be considered to be commenced on  
6 the date when the complaint is filed.

7 (d) FALSE STATEMENTS.—If the Secretary finds  
8 that any individual falsely certifies the medical condition  
9 of any person in order to obtain family and medical insur-  
10 ance benefits under this title with the intent to defraud,  
11 whether for the maker or for any other person, the Sec-  
12 retary shall assess a penalty against the individual in an  
13 amount up to 100 percent of the benefits paid as a result  
14 of the false certification. Penalties collected under this sec-  
15 tion shall be deposited in the Trust Fund, notwithstanding  
16 the provisions of title 31, United States Code.

17 (e) INVESTIGATIVE AUTHORITY.—

18 (1) IN GENERAL.—To ensure compliance with  
19 the provisions of this title, or any regulation or order  
20 issued under this title, the Secretary shall have, sub-  
21 ject to paragraph (3), the investigative authority  
22 provided under section 11(a) of the Fair Labor  
23 Standards Act of 1938 (29 U.S.C. 211(a)).

24 (2) OBLIGATION TO KEEP AND PRESERVE  
25 RECORDS.—Any employer shall make, keep, and pre-

1       serve records pertaining to compliance with this title  
2       in accordance with section 11(c) of the Fair Labor  
3       Standards Act of 1938 (29 U.S.C. 211(c)) and in  
4       accordance with regulations issued by the Secretary.

5           (3) REQUIRED SUBMISSIONS GENERALLY LIM-  
6       ITED TO AN ANNUAL BASIS.—The Secretary shall  
7       not under the authority of this subsection require  
8       any employer or any plan, fund, or program to sub-  
9       mit to the Secretary any books or records more than  
10      once during any 12-month period, unless the Sec-  
11      retary has reasonable cause to believe there may  
12      exist a violation of this title or any regulation or  
13      order issued pursuant to this title, or is investigating  
14      a charge pursuant to paragraph (2).

15           (4) SUBPOENA POWER.—For the purposes of  
16      any investigation provided for in this section, the  
17      Secretary shall have the subpoena authority provided  
18      for under section 9 of the Fair Labor Standards Act  
19      of 1938 (29 U.S.C. 209).

20 **SEC. 107. CRIMINAL PENALTIES.**

21       Whoever—

22           (1) makes or causes to be made any false state-  
23      ment in support of an application for benefits under  
24      this title;

1           (2) knowingly presents or causes to be pre-  
2           sented any false written or oral material statement  
3           in support of any claim for benefits under this title;

4           (3) knowingly solicits, receives, offers, pays, or  
5           accepts any rebate, refund, commission, preference,  
6           patronage, dividend, discount, or other consider-  
7           ation, whether in the form of money or otherwise, as  
8           compensation or inducement for soliciting a claimant  
9           to apply for benefits under this title, except to the  
10          extent authorized by a law of the United States; or

11          (4) knowingly assists, abets, solicits, or con-  
12          spires with any person who engages in an act that  
13          is prohibited under paragraph (1), (2), or (3),

14 shall be guilty of a felony and upon conviction shall be  
15 fined under title 18, United States Code, or imprisoned  
16 for not more than 5 years, or both.

17 **SEC. 108. EDUCATION PROGRAMS.**

18          (a) **AUTHORITY.**—The Secretary shall develop and  
19 maintain a program of education concerning the paid fam-  
20 ily medical and insurance rights and benefits under this  
21 title.

22          (b) **NOTICE TO EMPLOYERS.**—The Secretary shall  
23 provide to each employer of employees subject to this title  
24 a notice informing employees of their family and medical  
25 insurance rights and benefits under this title. The notice

1 shall be given by every employer to each new employee  
2 hired, and to each employee leaving work under the al-  
3 lowed circumstances of this title.

4 **SEC. 109. EFFECTIVE DATE.**

5 This title shall take effect on January 1, 2006, and  
6 shall apply to periods of leave that commence on or after  
7 January 1, 2008.

8 **TITLE II—FAMILY AND MEDICAL**  
9 **LEAVE TRUST FUND**

10 **SEC. 201. ESTABLISHMENT.**

11 (a) IN GENERAL.—There is created in the Treasury  
12 of the United States a trust fund to be known as the Fam-  
13 ily and Medical Leave Trust Fund. The Trust Fund shall  
14 consist of such amounts as may be deposited in, or appro-  
15 priated to, such fund as provided in this section.

16 (b) APPROPRIATIONS TO TRUST FUND.—

17 (1) AMOUNTS APPROPRIATED.—There is appro-  
18 priated to the Trust Fund for fiscal year 2006 and  
19 each fiscal year thereafter, out of any moneys in the  
20 Treasury not otherwise appropriated, amounts equiv-  
21 alent to 100 percent of—

22 (A) the taxes imposed by section 3111(c)  
23 of the Internal Revenue Code of 1986 with re-  
24 spect to wages (as defined in section 3121 of  
25 such Code) reported to the Secretary of the

1 Treasury or the Secretary's delegate pursuant  
2 to subtitle F of such Code on or after January  
3 1, 2006, as determined by the Secretary by ap-  
4 plying the applicable rates of tax under such  
5 sections to such wages, which wages shall be  
6 certified by the Commissioner of Social Security  
7 on the basis of the records of wages established  
8 and maintained by the Commissioner in accord-  
9 ance with such reports; and

10 (B) the taxes imposed by section 1401(c)  
11 of such Code with respect to self-employment  
12 income (as defined in section 1402 of such  
13 Code) reported to the Secretary of the Treasury  
14 or the Secretary's delegate on tax returns under  
15 subtitle F of such Code, as determined by the  
16 Secretary by applying the applicable rate of tax  
17 under such section 1401(c) to such self-employ-  
18 ment income, which self-employment income  
19 shall be certified by the Commissioner of Social  
20 Security on the basis of the records of self-em-  
21 ployment income established and maintained by  
22 the Commissioner in accordance with such re-  
23 turns.

24 (2) TRANSFERS.—Such appropriated amounts  
25 shall be transferred from time to time from the gen-

1       eral fund of the Treasury to the Trust Fund. Such  
2       amounts shall be determined on the basis of esti-  
3       mates by the Secretary of the Treasury of the taxes,  
4       specified in paragraph (1), paid to or deposited into  
5       the Treasury, and proper adjustments shall be made  
6       in amounts subsequently transferred to the extent  
7       prior estimates were in excess of or were less than  
8       such taxes.

9               (3) INVESTMENTS.—All amounts transferred to  
10       the Trust Fund under paragraph (2) shall be in-  
11       vested by the Managing Trustee referred to in sec-  
12       tion 202(c) in the same manner and to the same ex-  
13       tent as the other assets of the Trust Fund.

14   **SEC. 202. BOARD OF TRUSTEES.**

15       (a) ESTABLISHMENT AND MEMBERSHIP.—With re-  
16       spect to the Trust Fund, there is established a body to  
17       be known as the Board of Trustees of the Trust Fund  
18       which shall be composed of the Secretary of the Treasury,  
19       the Secretary of Labor, the Commissioner of Social Secu-  
20       rity, and the Secretary of Health and Human Services,  
21       all ex officio, and of two members of the public (both of  
22       whom may not be from the same political party), who shall  
23       be nominated by the President, by and with the advice  
24       and consent of the Senate.

1           (b) TERMS AND VACANCIES.—Members of the Board  
2 of Trustees shall serve for a period of 4 years. A member  
3 of the Board of Trustees nominated and confirmed as a  
4 member of the public to fill a vacancy occurring during  
5 a term shall be nominated and confirmed only for the re-  
6 mainder of such term. An individual nominated and con-  
7 firmed as a member of the public may serve in such posi-  
8 tion after the expiration of such member’s term until the  
9 earlier of the date on which the member’s successor takes  
10 office or the date on which a report of the Board is first  
11 issued under paragraph (2) after the expiration of the  
12 member’s term.

13           (c) MANAGING TRUSTEE AND SECRETARY.—The  
14 Secretary of the Treasury shall be the Managing Trustee  
15 of the Board of Trustees. The Secretary of Labor shall  
16 serve as the Secretary of the Board of Trustees.

17           (d) BASIC DUTIES OF THE BOARD OF TRUSTEES.—  
18 The Board of Trustees shall meet not less frequently than  
19 once each calendar year. It shall be the duty of the Board  
20 of Trustees to—

21                   (1) hold the Trust Fund;

22                   (2) report to Congress not later than April 1 of  
23 each year—

1 (A) on the operation and status of the  
2 Trust Fund during the fiscal year preceding the  
3 fiscal year in which the report is made; and

4 (B) on the expected operation and status  
5 of the Trust Fund during the fiscal year in  
6 which the report is made and the next two fis-  
7 cal years;

8 (3) report immediately to Congress whenever  
9 the Board is of the opinion that the amount in the  
10 Trust Fund is unduly small; and

11 (4) review the general policies followed in man-  
12 aging the Trust Fund, and recommend changes in  
13 such policies, including necessary changes in the  
14 provisions of law that govern the way in which the  
15 Trust Fund is to be managed.

16 (e) REQUIREMENTS RELATING TO ANNUAL RE-  
17 PORT.—The report provided for in subsection (d)(2) shall  
18 include a statement of the assets of, and the disburse-  
19 ments made from, the Trust Fund during the fiscal year  
20 preceding the fiscal year in which the report is made, an  
21 estimate of the expected income to, and disbursements to  
22 be made from, the Trust Fund during the fiscal year in  
23 which the report is made and each of the next two fiscal  
24 years, and a statement of the actuarial status of the Trust  
25 Fund. Such report shall also include an actuarial opinion

1 by an appropriate employee of the Department of Labor  
2 certifying that the techniques and methodologies used for  
3 the report are generally accepted within the actuarial pro-  
4 fession and that the assumptions and cost estimates used  
5 for the report are reasonable. Such report shall be printed  
6 as a document of the House of Representatives for the  
7 session of the Congress to which the report is made.

8 (f) LIABILITY.—A person serving as a member of the  
9 Board of Trustees shall not be considered to be a fiduciary  
10 and shall not be personally liable for actions taken in such  
11 capacity with respect to the Trust Fund.

12 **SEC. 203. INVESTMENT OF THE TRUST FUND.**

13 (a) OBLIGATIONS.—It shall be the duty of the Man-  
14 aging Trustee to invest such portion of the Trust Fund  
15 as is not, in the trustee's judgment, required to meet cur-  
16 rent withdrawals. Such investments may be made only in  
17 interest-bearing obligations of the United States or in obli-  
18 gations guaranteed as to both principal and interest by  
19 the United States.

20 (b) ACQUISITION.—The obligations referred to in  
21 subsection (a) may be acquired—

22 (1) on original issue at the issue price; or

23 (2) by purchase of outstanding obligations at  
24 the market price.

1           (c) OBLIGATIONS ISSUED FOR PURCHASE BY TRUST  
2 FUND.—The purposes for which obligations of the United  
3 States may be issued under chapter 31 of title 31, United  
4 States Code, are extended to authorize the issuance at par  
5 of public debt obligations for purchase by the Trust Fund.  
6 Such obligations issued for purchase by the Trust Fund  
7 shall have dates of maturity fixed with due regard for the  
8 needs of the Trust Fund. Such obligations shall bear inter-  
9 est at a rate equal to—

10           (1) except as provided in paragraph (2), the av-  
11 erage market yield (computed by the Managing  
12 Trustee on the basis of market quotations as of the  
13 end of the calendar month preceding the date of  
14 such issue) on all marketable interest-bearing obliga-  
15 tions of the United States forming a part of the  
16 public debt that are not due or callable until after  
17 the expiration of four years from the end of such  
18 calendar month; or

19           (2) in a case in which such average market  
20 yield is not a multiple of 0.1 percent, the multiple  
21 of 0.1 percent nearest such market yield.

22           (d) OTHER OBLIGATIONS.—The Managing Trustee  
23 may purchase interest-bearing obligations of the United  
24 States that are not described in subsection (c) or obliga-  
25 tions guaranteed as to both principal and interest by the

1 United States, on original issue or at the market price,  
2 only in cases in which the trustee determines that the pur-  
3 chase of obligations described in this paragraph is in the  
4 public interest.

5 (e) DISPOSITION AND REDEMPTION OF OBLIGA-  
6 TIONS.—Any obligations acquired by the Trust Fund (ex-  
7 cept public debt obligations issued exclusively to the Trust  
8 Fund) may be sold by the Managing Trustee at the mar-  
9 ket price, and such public debt obligations may be re-  
10 deemed at par plus accrued interest.

11 (f) CREDITING OF INTEREST AND PROCEEDS.—The  
12 interest on, and the proceeds from the sale or redemption  
13 of, any obligations held in the Trust Fund shall be cred-  
14 ited to and form a part of the Trust Fund.

15 **SEC. 204. PAYMENTS FROM TRUST FUND.**

16 The Managing Trustee shall pay from time to time  
17 from the Trust Fund such amounts as the Secretary of  
18 Labor certifies are necessary to make the payments pro-  
19 vided for by section 102, and payments with respect to  
20 administrative expenses under section 205.

21 **SEC. 205. ADMINISTRATIVE EXPENSES.**

22 (a) AVAILABILITY OF TRUST FUND.—Under regula-  
23 tions that shall be prescribed by the Secretary of Labor,  
24 funds shall be made available from the Trust Fund in con-  
25 nection with the administration of this Act and the admin-

1 istration of related provisions of the Internal Revenue  
2 Code of 1986 in the same manner and extent as funds  
3 are made available from the trust funds referred to in sec-  
4 tion 201(g) of the Social Security Act (42 U.S.C. 401(g))  
5 in connection with the administration of the relevant pro-  
6 visions referred to in such section.

7 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
8 are authorized to be made available for expenditure, out  
9 of the Trust Fund, such amounts as Congress may deter-  
10 mine to be appropriate to pay—

11 (1) the costs of the part of the administration  
12 of this Act for which the Secretary of Labor is re-  
13 sponsible; and

14 (2) the costs of carrying out the functions of  
15 the Social Security Administration specified in sec-  
16 tion 232 of the Social Security Act (42 U.S.C. 432)  
17 (made applicable under subsection (j)), that relate to  
18 the administration of provisions of the Internal Rev-  
19 enue Code of 1986, other than those costs excluded  
20 under the regulations of the Secretary of Labor pre-  
21 scribed pursuant to paragraph (1).

22 (c) GIFTS AND BEQUESTS.—The Managing Trustee  
23 may accept on behalf of the United States money gifts  
24 and bequests made unconditionally to the Trust Fund for  
25 the benefit of the Trust Fund or any activity financed

1 through the Trust Fund and such gifts and bequests shall  
2 be deposited into the Trust Fund.

3 (d) PROCESSING OF TAX DATA.—Section 232 of the  
4 Social Security Act (42 U.S.C. 432) shall apply with re-  
5 spect to this Act, in the same manner and to the same  
6 extent as such section applies with respect to title II of  
7 the Social Security Act (42 U.S.C. 401 et seq.).

8 **SEC. 206. AMENDMENTS TO THE INTERNAL REVENUE CODE**  
9 **OF 1986.**

10 (a) TAX ON EMPLOYERS.—Section 3111 of such  
11 Code (relating to tax on employers) is amended—

12 (1) by redesignating subsection (c) as sub-  
13 section (d); and

14 (2) by inserting after subsection (b) the fol-  
15 lowing new subsection:

16 “(c) FAMILY AND MEDICAL INSURANCE.—

17 “(1) IN GENERAL.—In addition to the taxes im-  
18 posed by subsections (a) and (b), there is imposed  
19 on every employer an excise tax, with respect to hav-  
20 ing individuals in such employer’s employ, equal to  
21 0.4 percent of the wages paid by such employer with  
22 respect to employment (as defined in section  
23 3121(b)).

24 “(2) EXCEPTION FOR EMPLOYERS WITH EQUIV-  
25 ALENT OR BETTER PLAN.—Paragraph (1) shall not

1       apply with respect to a period of employment by an  
2       employer during which the Secretary of Labor deter-  
3       mines the employer has in effect a plan which is  
4       equivalent to or better than the Family and Medical  
5       Insurance Program (established under the Family  
6       and Medical Insurance Act of 2005). For purposes  
7       of the preceding sentence, the Secretary of Labor  
8       shall prescribe such regulations as may be appro-  
9       priate or necessary, including regulations requiring  
10      documentation of employer programs.”.

11      (b) SELF-EMPLOYMENT TAX.—Section 1401 of such  
12      Code is amended—

13           (1) by redesignating subsection (c) as sub-  
14           section (d); and

15           (2) by inserting after subsection (b) the fol-  
16           lowing new subsection:

17      “(c) FAMILY AND MEDICAL INSURANCE.—In addi-  
18      tion to the taxes imposed by subsections (a) and (b), there  
19      is imposed for each taxable year, on the self-employment  
20      income of every individual who has elected to participate  
21      in the Family and Medical Insurance Program (estab-  
22      lished under the Family and Medical Insurance Act of  
23      2005) a tax equal to 0.4 percent of the amount of the  
24      self-employment income for such taxable year.”.

25      (c) EFFECTIVE DATE.—

1           (1) EMPLOYMENT TAXES.—The amendments  
2           made by subsection (a) shall apply to wages paid on  
3           or after January 1, 2006.

4           (2) SELF-EMPLOYMENT TAX.—The amend-  
5           ments made by subsection (b) shall apply to taxable  
6           years beginning on or after January 1, 2006.

○